

**REMARKS**

Applicant request further examination and consideration in view of the remarks and amendments contained herein. Claims 35, 47, 85 and 88 have been amended. Claims 35-47 and 49-96 are pending in this application.

**Rejection Under 35 U.S.C. § 102(e) (Kenyon)**

Claims 35-44, 47, 49-51, 53-62, 85-90 and 95-96 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,194,752 to Kenyon et al (hereinafter "Kenyon").

It is well settled that to anticipate a claim, the reference must teach every element of the claim, see M.P.E.P. § 2131. Moreover, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he elements must be arranged as required by the claim," see M.P.E.P. § 2131, citing *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Furthermore, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim," see M.P.E.P. § 2131, citing *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989). Applicant respectfully asserts that the rejection does not satisfy these requirements.

Claim 35, as amended, requires directly receiving from the remote audio capture device a signal, the signal including a captured sample of the music broadcast. Claim 47, as amended, requires receiving a signal directly from the remote audio capture device, the signal including a captured sample of the music from the user; wherein the music is audible by the user and the captured sample includes a sample of the music. Claim 85, as amended requires, receiving a signal including a captured sample of the broadcast from a cell phone of the user, the cell phone transmitting the captured signal over the cellular network, said broadcast comprising music. Claim 88, as amended, requires receiving a signal from a cell phone of the user, the signal including a captured sample of the broadcast from the user, said broadcast comprising music.

Kenyon does not describe at least these limitations. Instead Kenyon describes a Signal Recognition system that directly collects broadcast and satellite audio and video for

identification. Interface subsystem 1 from Figure 1 and column 16, lines 14-28. Each recognition station includes one or more of the interface subsystems which accept broadcast sources that have signals to be identified. Column 16, lines 14-21. Enough interface systems could be employed at a particular station to monitor all broadcast and cable TV stations and all AM and FM radio stations within that city. Column 16, lines 24-27.

As Kenyon does not describe a remote audio capture device providing a signal, the signal including a captured sample, as required by claims 35 and 47 or a cell phone proving a signal, the signal including a captured sample as required by claims 85 and 88, Kenyon does not describe each and every element of claims 35, 47, 85 or 88. Claim 35, 47, 85 and 88 are, therefore, not anticipated by Kenyon and allowable over the rejection of record.

Claims 36-44, 49-51, 53-62, 86-87, 89-90 and 95-96 depend from one of claims 35, 47, 85 or 88 and, therefore, inherit all the limitations of their respective base claims. As the respective base claims are allowable for the reasons set forth above, Applicant respectfully asserts that claims 36-44, 49-51, 53-62, 86-87, 89-90 and 95-96 are allowable over the rejection of record.

**Rejection Under 35 U.S.C. § 103(a) (Kenyon in view of Pocock)**

Claims 45-46, 52, 63-84, and 91-94 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kenyon in view of U.S. Patent No. 5,661,787 to Pocock (hereinafter "Pocock").

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art cited must teach or suggest all the claim elements. *See* M.P.E.P. § 2143. Without conceding that the first second criteria are satisfied, Applicant respectfully asserts that the Examiner's rejection fails to satisfy at least the third criteria.

Claims 45-46, 52, 63-84, and 91-94 depend from one of claims 35, 47, 85 or 88 and, therefore, inherit all the limitations of their respective base claims. As the respective base

claims are allowable for the reasons set forth above, Applicant respectfully asserts that claims 45-46, 52, 63-84, and 91-94 are allowable over the rejection of record.

**United States Patent No. 7,174,293 (Kenyon II)**

Though the Examiner has not specifically rejected the pending claims in view of United States Patent No. 7,174,293 to Kenyon et al. (hereinafter "Kenyon II"), in view of the amendments to the claims and in furtherance of prosecution, Applicant would like the Examiner to consider the following remarks.

As stated above, claim 35, as amended, requires directly receiving from the remote audio capture device a signal, the signal including a captured sample of the music broadcast. Claim 47, as amended, requires receiving a signal directly from the remote audio capture device, the signal including a captured sample of the music from the user; wherein the music is audible by the user and the captured sample includes a sample of the music. Claim 85, as amended requires, receiving a signal including a captured sample of the broadcast from a cell phone of the user, the cell phone transmitting the captured signal over the cellular network, said broadcast comprising music. Claim 88, as amended, requires receiving a signal from a cell phone of the user, the signal including a captured sample of the broadcast from the user, said broadcast comprising music.

While Kenyon II describes an audio capture device remote from the host identification system, Kenyon II does not describe directly receiving from the remote capture device a signal including a captured sample of a music broadcast. Instead, Kenyon describes using an audio capture device that must first be connected to a personal computer where the captured audio is transferred over a data link, and then the captured audio is sent from the PC over the internet for identification. This structure is shown in Figure 1 and described in detail at column 10, line 61 through column 11, line 15, column 11, lines 27-34, and column 11, lines 39-43. No other mechanism for is described for sending audio captured by the audio capture device 2, from Figure 1, to the host computer site 4. Kenyon II therefore does not describe the recited limitation from claim 35.

For the reasons described with respect to claim 35, Kenyon II also does not describe the recited limitations of claims 47, 85 and 88.